

RESTITUTION FOR UNJUST ENRICHMENT AND THE BREACH OF DEGROWTH OBLIGATIONS

A RESTITUIÇÃO PELO ILÍCITO LUCRATIVO EM FACE DO DESCUMPRIMENTO DO DEVER DE DECRESCIMENTO

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Abstract

This paper aims to scrutinize unjust enrichment from the perspective of degrowth, a topic of profound importance today as it presents alternatives to uphold the constitutional principle of human dignity, ensuring equitable access to fundamental rights for all. It advocates for a paradigm shift in mindset and action, positioning degrowth as an integral duty linked to the fundamental obligation of protecting an ecologically balanced environment. In this context, maintaining production levels without adhering to the environmental limits set by relevant authorities is illegal. Profits derived from such acts thus constitute unjust enrichment and should be reallocated to those directly impacted, when identifiable, and to society at large, which endures

Resumo

Este trabalho visa abordar o enriquecimento ilícito e lucrativo versus o decrescimento, tema de extrema importância na atualidade, já que busca alternativas à consagração do princípio constitucional da dignidade humana da pessoa, de modo que todos possam ter acesso aos mesmos direitos fundamentais. É necessária uma mudança de pensamento e atuação, abordando-se o decrescimento como um dever anexo ao dever fundamental de proteção ao meio ambiente ecologicamente equilibrado. Nesses termos, a continuidade dos níveis de produção sem a readaptação aos limites estabelecidos pelas autoridades competentes em matéria ambiental se traduz em ato ilícito. Os lucros daí advindos, portanto, constituem enriquecimento sem causa e devem ser destinados aos afetados



the violation of its collective right to an ecologically balanced environment. The study utilizes an extensive interdisciplinary bibliographic approach, spanning from constitutional law through environmental and criminal law.

Keywords: change; enrichment; readjustment.

diretos quando identificados e à sociedade, que suportaram a violação do seu direito difuso ao meio ambiente ecologicamente equilibrado. Utilizou-se de ampla pesquisa bibliográfica interdisciplinar, passando desde o Direito Constitucional até o Direito Ambiental e Penal.

Palavras-chave: enriquecimento; mudança; readequação.

Introduction

In response to the global demands from the international community for production and consumption adjustments due to climate change and the imperative of environmental balance, there is a growing need for legal and political frameworks. These frameworks must address these concerns and align our way of life with the Sustainable Development Goals (SDGs) of the United Nations (UN). In this landscape, economic activity is exercised by the necessity to preserve natural resources (Art. 170 of the Brazilian Federal Constitution). However, some economic sectors prioritize financial interests, a stance bolstered by ideologies infiltrating academia, underlining the urgent need to deconstruct flawed consensus.

Academic discourse often portrays the economy as value-neutral, focused on the present ('what is') rather than aspirational ideals ('what should be'). This perspective, significantly influenced by Milton Friedman and the Chicago School's ideologies in the twentieth century, has sidelined the ethical essence of economic endeavors. As a result, economics, conceived as the study of human behavior in relation to limited resources and desired ends, has predominantly adopted a one-dimensional view centered on the rational economic human. Nevertheless, the technological advancements and economic growth of the twentieth century were paralleled by an increased awareness of the environmental impacts of various productive activities. This recognition led to environmental concerns being seen as obstacles to traditional progress concepts.

Furthermore, the neutralization of the economy led to the co-option of environmentalists' demands. Terms like "sustainable growth" have become commonplace, often parroted by technocrats allied with major corporations and governments focused on GDP growth. However, their actions rarely reflect genuine

environmental improvement efforts; instead, they prioritize continuous production growth. This context has bolstered certain business activities, driven by the lure of investor returns and GDP expansion, fostering a harmful alliance between market interests and government agendas. Consequently, despite their environmental harms, economic activities are revered if they boost GDP and profit investors. In response, the 193 UN endorsed the SDGs as part of the 2030 Agenda, aiming to improve the planet's environmental state. These goals include combating climate change, restoring ecosystems, fighting desertification, and promoting sustainable consumption and production.

Given these goals, Brazil must reevaluate its economic activities' *modus operandi*, ensuring alignment with constitutional frameworks, particularly regarding environmental protection and sustainable natural resource use. Productive activities must meet constitutional requirements and avoid rights misuse. There is no 'acquired right to environmental degradation', even if activities promise GDP growth, export increases, or job creation. The notion of tolerable pollution levels is flawed, portraying planetary degradation as an inevitable cost of the 'greater good'—the economic progress of certain sectors.

If mere surplus generation justified business development, activities like psychotropic drug production and trafficking, despite their clear illegality, would be categorized similarly, contributing to the economy and requiring a workforce. This comparison illustrates how certain socially acceptable activities are not perceived as illegal, unlike drug trafficking, to the extent that it might be startling for observers. Nevertheless, this perception does not diminish their impacts, which can be as severe or more detrimental than drug use.

Environmental impacts carry intergenerational consequences, affecting the current quality of life, soil productivity, natural resource regeneration, ongoing land yield, water and air quality, and future generations' prospects for a healthy life. Thus, this research explores the growing illegality of certain economic activities, which, despite initial legality, have become unconstitutional practices, necessitating a shift towards degrowth. Examples include large-scale livestock farming in southeastern Brazilian states and Amazon regions and eucalyptus monoculture in parts of Espírito Santo State.

Given these activities' environmental impacts and prevailing scientific consensus, they can no longer be deemed lawful or constitutional, infringing on the universally recognized right to an ecologically balanced environment. This article assesses the legality of discouraging polluting activities in the current context, showing that reliance solely on reparative civil liability protection or

punitive actions by the Judiciary and Public Prosecutor's Office, following the state corporation paradigm,¹ is ineffective in improving environmental conditions.

To achieve this objective, bibliographic research was conducted, encompassing scientific works, articles, and data from research institutes like the Institute of Applied Economic Research (IPEA), along with an analysis of relevant Brazilian legislation using a deductive method. Considering that economic activities have often proceeded without proper regard for their environmental impact, resulting in potentially irreversible damage for which responsible parties are inadequately held accountable or fail to sufficiently rectify, this study aims to examine the following through comprehensive analysis: the new mandates imposed by the international community regarding adjustments in production and consumption levels to combat climate change and foster environmental preservation; potential legal and political mechanisms aimed at balancing economic endeavors with the imperative need for natural resource conservation, fostering sustainable development practices; and viable avenues for remedying inflicted damage. These should serve as effective deterrents against actions infringing upon environmental law principles and ensure adequate punishment while emphasizing the necessity for thorough restitution within the framework of civil liability. The focus here lies on restorative protection concerning the failure to mitigate harm and the unwarranted enrichment of entrepreneurs.

Within this context, the conventional approach guided by traditional civil liability inadvertently reinforces behavior that transgresses environmental norms, driven by a 'price-performance' perspective regarding activities with detrimental ecological impacts. The current system often sees penalties (e.g., fines or sanctions) as a mere price to continue polluting, perpetuating the cycle where it is more advantageous to engage in harmful activities. This imbalance arises when the consequences of sanctions are less substantial (and even less likely) than the competitive advantages and profits obtained from polluting activities. This is if investigations and punishments occur, which is increasingly rare in the face of the capture of the state corporation by the interests of economic conglomerates.

In this evolving social landscape influenced by scientific and intellectual advancements, previously permissible activities can no longer be treated as such

¹ The state corporation is no longer primarily concerned with serving the interests of the public, who elect their representatives through elections. Instead, conglomerates with economic power are now exerting their influence and shaping political decisions. These interests include relaxing environmental regulations, creating political divisions, weakening environmental oversight organizations, allowing polluting activities to continue, approving the use of new pesticides, and not adequately monitoring deforestation, among other issues.

with the emerging ecological paradigms. The defense of ontological or intrinsic dignity, surpassing the relational conception of human dignity, serves as a robust foundation for safeguarding an ecologically balanced environment by rejecting the instrumentalization of life. Beyond its significance in private ethics, human dignity fosters harmonious societal coexistence and the promotion of collective well-being, a perspective that does not take away from the importance attributed to biocentric values.

As the global community reevaluates the limits of natural resource utilization, activities depleting biomes, compromising air quality, and emitting substantial greenhouse gases can no longer be tolerated. Consequently, establishing an ecologically balanced environment as a fundamental right is now unequivocal. Given this evolving landscape, an imperative for degrowth concerning these economic activities arises—a proposition met with resistance from major environmental polluters wielding economic influence, media support, and, notably in the Brazilian context, alignment with the state corporation itself.

The foremost challenge lies not only in prompting change among the populace but also among leaders. Thus, the primary objective is to explore solutions to this pressing issue, seeking a middle ground that enhances the quality of life for the population while conscientiously sustaining the use of available resources. Amidst the democratic process, revisiting old practices and policies remains inherent. However, in the current context, as economic entities lag behind the environmental agenda, a new concept of accountability for lucrative illegal activities emerges. This concept, rooted in comparative law and tentatively entering the Brazilian legal landscape, represents a novel form of accountability for profitable yet detrimental practices. Termed as a 'restitution claim', this accountability marks a significant shift in safeguarding the fundamental right to an ecologically balanced environment. Its implementation introduces the duty of degrowth, specifically targeting highly damaging parasitic activities. Embracing this approach in Brazilian law offers an alternative route to prevent environmental collapse, addressing local and global environmental challenges.

1 The right to a balanced environment and the challenges of research in law

The focus on environmental issues within the Brazilian legal system is a relatively recent phenomenon. Before the 1980s, legislation addressing environmental concerns was almost non-existent, confining such matters largely to civil and property law, including neighborhood rights. A significant change occurred in

1981 with the enactment of Law No. 6,981, establishing Brazil's National Environmental Policy (NEP) (Brasil, 1981). This development mirrored the growing international discourse on environmental protection, notably influenced by the 1972 Stockholm Conference. As per Art. 3 of the NEP, the legal definition of the environment encompasses a broad view, seeing it as a collective of conditions, laws, influences, and interactions of physical, chemical, and biological nature that support and regulate life in all its forms (Brasil, 1981). This broad definition necessitates the inclusion of diverse disciplines like physics, chemistry, and biology within legal studies, posing a unique challenge for researchers investigating the right to an ecologically balanced environment and environmental disasters. As Moreira (2008, p. 96; our translation) notes, “the reinterpretation of past practices is inherent in democracy itself, continuously reinventing through the perpetual reestablishment of social and political institutions and the ongoing formulation of rights and responsibilities”.

The environment extends beyond the natural world to include constructed, cultural, and occupational settings, where the latter is influenced by human usage and governance. The transboundary nature of environmental incidents (principle of ubiquity) adds complexity and urgency to addressing these issues. Environmental law researchers must traverse various fields, addressing legal questions with concepts and evidence from multiple disciplines, highlighting the interdisciplinary nature of their work. The challenge also includes sourcing reliable, unbiased information that does not compromise the integrity of their research; hence, this is seen as the foremost challenge.

2 The pollution and the polluter in Brazilian law

In the context of environmental disasters and polluting activities, defining the concept of a polluter, identified as the active agent responsible for environmental degradation, is essential. According to Art. 3, Section 4 of the NEP, a polluter is an individual or public or private entity directly or indirectly responsible for actions leading to environmental harm (Brasil 1981). Brazilian law defines ‘pollution’ as the degradation of environmental quality resulting from activities that: a) directly or indirectly jeopardize human health, safety, and welfare; b) create adverse conditions for social and economic activities; c) damage biota; d) affect the aesthetic or sanitary condition of the environment; or e) emit substances or energy in violation of established environmental standards (Art. 3, Section 3 of the NEP).

Thus, pollution arises from human actions, not natural ecological processes. The concepts of the polluter and pollution originate from human decisions, reflecting the outcomes of rational choices and conscious deliberation about our planet. In Brazil, two major contributors to environmental degradation are greenhouse gas emissions and soil desertification, primarily driven by commercial livestock farming and eucalyptus monoculture. These practices not only have significant environmental impacts and breach Brazil's international commitments but also pose severe social challenges by hindering the progress of family farming. As a result, family farmers and rural workers are forced to adapt to the demands of large corporations and laboratories, the only entities capable of managing production in depleted environments. Dependence on inputs like fertilizers, pesticides, and genetically modified seeds becomes inevitable for successful yields.

This cycle of diminishing fertility and resources, necessitating increased use of agricultural inputs, combined with the lack of government policies for environmental preservation, renders industrial-scale livestock farming and eucalyptus monoculture illegal practices. This is further substantiated by data revealed during the signing of the Kyoto Protocol and the Paris Agreement on global warming, aligning with the UN's Sustainable Development Goals. Ignoring international benchmarks and objectives, actions, or inactions leading to environmental depletion cannot be legally justified, especially when the right to an ecologically balanced environment is recognized as a fundamental right.

One principle of the Rio Declaration on Environment and Development (Rio-92) states that "To achieve sustainable development, environmental protection must be an integral part of the development process and cannot be considered in isolation" (United Nations, 1993, p. 4). This principle, advocating the integration of environmental considerations into development policy decision-making, opposes justifying the continuation of certain productive activities solely based on economic, export, or commodity valorization profits, disregarding their impact on the planet and global sustainability goals.

3 The incompatibility of productivism with environmental sustainability

The Rio Declaration on Environment and Development emphasized in its principles that "the right to development must be equitably fulfilled to meet the developmental and environmental needs of present and future generations" (United Nations, 1993, p. 3). Despite frequent discussions on individual accountability for environmental harm, there is a notable lack of discourse on

halting or significantly reducing activities that, while profitable, deteriorate human life and the planet. Activities including cattle farming and eucalyptus monoculture in certain Brazilian regions are clear examples of this. Economic liberty narratives and GDP growth have fostered a vicious cycle that obstructs legal progress in environmental protection.

This challenge is rooted in discourse and what Freitas (2019, p. 156) calls ‘consensus fallacies’. Rather than considering the cessation of certain activities, the focus is minimizing resultant harm. Reports of research into technologies purportedly reducing the environmental impact of livestock and eucalyptus cultivation often emerge. However, these advances are limited by technical feasibility or high costs, yielding minimal tangible results.

A survey by the Ministry of Agriculture, Livestock, and Supply on Brazilian agribusiness projections outlined objectives such as “identifying developmental trajectories for key agribusiness products” and “formulating global agribusiness outlooks to ensure continuous growth and market penetration” (Brasil, 2018, p. 6; our translation). The study reflects a fundamental assumption focused on the ‘necessity for market expansion’ devoid of reservations. Notably absent in this material is any counterpoint concerning environmental preservation and sustainability—particularly significant in a report discussing activities that significantly contribute to environmental pollution and damage in the country. According to the study, the most important thing is market expansion, as highlighted below (Brasil, 2018, p. 7; our translation):

2017 marked an extraordinary period for Brazilian agriculture, with record grain production reaching 237.6 million tons across a planted area of 61.0 million hectares. Notably, agricultural GDP surged by 13.0% during the year, while the national economy’s GDP was 1.0%. Although this year may not replicate the results of 2017, data released by IBGE indicates a 1.3% GDP growth in the last four quarters of the year, with agriculture rising by 6.1%, industry by 0.6%, and services by 1.0% (cumulative quarters from April 2017 to March 2018). The 2017/18 harvest, reported in July by CONAB, recorded 228.5 million tons, falling slightly below the 237.7 million tons in 2017, according to CONAB, or 240.6 million tons as per IBGE.

Looking towards 2022, IPEA provided optimistic data on the ongoing prosperity of Brazilian agribusiness (Kreter; Pastre; Servo, 2022, p. 1; our translation):

Brazilian agribusiness closed February 2022 with a trade surplus of US\$9.3 billion, marking a 78.8% increase from February 2021 and a 20.8% surge compared to January 2022 (Table 1). The agricultural sector’s exports accounted for 45.9% of Brazil’s total exports that month, totaling US\$10.5 billion (Figure 1), while imports

represented a mere 6.6%, amounting to US\$1.2 billion (Figure 2). This marked a 64.5% increase and a 2.0% rise, respectively, compared to the same month of the previous year. The positive contribution of agribusiness significantly impacted the overall trade balance, resulting in a surplus of US\$4.0 billion by the end of February when considering products from all sectors.

The government's official discourse seems to propagate a misconception that growth in production and exports automatically translates into enhancements in quality of life and social development. This perpetuates what Freitas (2019, p. 156) calls the “consensus fallacy”, aiming to bolster irrational decisions by fabricating a false agreement. According to the IPEA study, the government lauds the surge in prices: “February’s trade balance affirms the upward trajectory in the value of agribusiness exports observed in January 2022. Most agricultural commodities have witnessed price recovery” (Kreter; Pastre; Servo, 2022, p. 5; our translation).

However, the GDP's magnitude and export volumes have not equated to fair income distribution in the country. On the contrary, recent years have witnessed a concentration of wealth, with Brazil returning to the Hunger Map. In 2021, 19 million people faced hunger, which escalated to 33 million in 2022—coinciding with unprecedented prosperity in agribusiness productivity. This reveals a landscape where few reap the benefits while many suffer the consequences—environmental degradation and soaring food prices that transform necessities into commodities.²

Certain activities (e.g., corporate livestock farming) are unjustifiable even under the pretext of combating hunger. Brazilian agriculture seems more aligned with financial market interests (i.e., commodities)³ than addressing food scarcity or improving social conditions (Daher, 2019). As per Raworth (2019, p. 44-45), the economy transitioned into a neutral space, a “value-free zone, shaking off any normative claims of what ought to be and emerging at last as a ‘positive’ science focused on describing simply what is. But this created a vacuum of goals and values”⁴ within the economic framework (Raworth, 2019, p. 45).

2 Given the transboundary nature of this damage, the assaults on the environment not only affect the Brazilian population but also have global implications. The damages caused are intergenerational, meaning that even future generations will suffer the consequences of current practices, posing a threat to the “right to a future”.

3 Brazilian livestock companies have strong connections with the international market, with offices abroad and specialized departments in commodity management. This further supports the argument that livestock farming is not primarily focused on addressing hunger or national interests (Moitinho, 2022).

4 Raworth (2019, p. 42) aptly illustrates that cuckoos are cunning birds. Instead of raising their own young, they stealthily lay their eggs in the unguarded nests of other birds. The unsuspecting adoptive parents duly incubate the intruder's egg along with their own. However, the cuckoo chick hatches

Countries have generally avoided implementing substantive changes in production and consumption patterns. Remarkably, developing nations have often misconstrued environmental concern as a luxury unaffordable for peripheral states. Countries have predominantly approached the environmental issue through a unilateral market-oriented logic, perceiving it primarily as ‘negative externalities’ managed through market mechanisms like quotas, taxes, and carbon credits (Raworth, 2019). Consequently, discourse on the right to a balanced environment is heavily skewed, favoring market impacts over environmental and social considerations, underpinned by the erroneous belief that ‘increased productivity benefits everyone’.

4 The call for economic degrowth in modern times

The concept of sustainable development, gaining prominence at the 1972 Stockholm Conference, aimed to improve lives, health, and environmental quality. Nonetheless, it has often been co-opted in pseudo-environmental policies, particularly amidst government neglect. Instead, the concept was manipulated, often used to gloss over pseudo-environmental public policies, especially in the face of governmental neglect. Concurrently, the idea of economic degrowth, introduced by French philosopher André Gorz in 1972, responded to the ‘Limits to Growth’ report and drew from Georgescu-Roegen’s theory (1971), which critiqued classical economic doctrines and the relentless pursuit of growth. Gorz (1972) advocated for zero growth (or degrowth) as a necessary response to the planet’s current state of environmental degradation (Georgescu-Roegen, 1971).

The scientific community marginalized him as his ideas challenged the prevailing system, aiming to address symptoms and alleviate the consequences inherent in production levels. According to Cesar (2019), Gorz’s ideas refused to accept levels of economic development as a given in guiding other actions. After being forgotten, particularly during the economic crises of the 1970s and 1980s, the concept of degrowth resurfaced in the 2000s in France. It evolved as a “social movement, protesting for car-free cities, communal dining spaces, and food production cooperatives, challenging prevailing propaganda” (Cesar, 2019, p. 35; our translation). The degrowth movement extended beyond France,

earlier, kicks the other eggs and chicks out of the nest, and then emits rapid calls to mimic a nest full of hungry offspring. This takeover tactic works: the adoptive parents diligently feed the disproportionately large tenant as it grows absurdly big, exceeding the limits of the small nest it occupied. This is a powerful warning to other birds: leave your nest unguarded, and it might well be hijacked. It is also a caution for the economy: lose sight of your goals, and something else might very well stealthily take their place.

gaining traction in Italy (*decescita*) in 2004 and Spain (*decrecimiento*) in 2006. Officially recognized as an international research topic, degrowth gained prominence at the Degrowth Conference in Paris in 2008. The movement originated from the understanding that society's fixation on growth is fundamentally incompatible with environmental preservation (Cesar, 2019, p. 35; our translation).

In these comings and goings, it was with the contributions of French philosopher Serge Latouche that economic degrowth gained notoriety and went beyond the barriers of the academic environment, becoming a political movement. The degrowth movement is a potential avenue to ensure equitable social progress and establish citizenship. Its terminology, “degrowth”, resists co-optation by the dominant capitalist system, unlike what happened with “sustainable development”. Degrowth inherently challenges the notion of unrestrained economic development, making it resistant to capture by prevailing systems (Dourado; Grande, 2020).

Even though the term “sustainability”, applied separately from the notion of “development”, was absorbed by the system, it remains relevant to the objectives of economic degrowth. Sustainability and degrowth are intertwined and mutually reinforcing. Sustainability is intricately tied to the preservation of the ecosystem and the promotion of a balanced life. Its core aim is to ensure that future generations inherit the same opportunities and resources for enjoyment as the current ones.

Conversely, degrowth emerges as a subsequent and complementary movement to sustainability. It calls for a significant structural shift in societal paradigms governing lifestyle, production, and consumption while challenging and transforming prevailing notions of development and quality of life, seeking to liberate societal imagination from entrenched perceptions (Hulse, 2017). According to Cesar (2019, p. 12; our translation), degrowth

critiques growth as a societal objective, fundamentally challenging the socio-economic system rooted in an ideology of perpetual growth. The concept advocates for a suite of institutional and structural transformations to ensure societal well-being while using fewer materials and less energy. It additionally includes objectives such as decentralization, the enhancement of democratic institutions, and the revitalization of the economy through a more political lens. These objectives align with the overarching aim of reducing consumption and production.

Amado (2016, p. 68; our translation), in turn, adds that:

Degrowth is a political slogan that aims to break with productivism. Its primary objective revolves around advocating the cessation of economic growth for its own sake. Those aligned with the degrowth movement articulate a radical critique of

development and aspire to outline an alternative vision for a post-development policy. This approach is deemed essential to rekindle space for innovation and imagination stifled by economic, developmental, and progressive dogmas. Supporters of degrowth assert that economic development, instead of being a solution to social and ecological issues, is their root cause and, therefore, should be critically analyzed and exposed as such.

While sustainability seeks to align the capitalist system more closely with environmental goals, degrowth aims to reconstruct the system itself fundamentally. It endeavors to reshape the production concept and redefine the essence of consumption. If sustainability seeks to realign the system, degrowth seeks to revolutionize it. Consequently, assessing whether adopting the economic degrowth model aligns with legal systems or contradicts constitutional norms, such as those establishing free enterprise as the foundation of the Republic, becomes crucial.

Though not explicitly articulated in constitutional texts, economic degrowth can be perceived as an outcome of the fundamental duty to safeguard the environment. This becomes more apparent considering the societal changes and environmental imperatives emphasized in the SDGs. The fundamental nature of economic degrowth intersects with the notions of human dignity, the right to life, and a balanced environment. Therefore, contemplating economic degrowth becomes imperative if there is a commitment to safeguarding these principles. Implementing fundamental rights aligned with the SDGs might call for the incorporation of degrowth in specific economic domains.

Degrowth, which aims to redefine established thinking, fundamentally reinterprets the meaning of development. It inherently calls for halting or reducing certain production practices, such as the livestock industry. It also encourages adopting new practices and technologies guided by the appreciation of local production and the heterogeneity of techniques, cultures, and new demands for conscious consumption. According to Latouche (2006, p. 5):

The growth-centric society is deemed undesirable for several compelling reasons: it amplifies inequalities and injustices, offers a deceptive sense of well-being, and paradoxically fosters a shallow and unhealthy anti-social environment despite its affluence.

Economic degrowth is a reference model, specifically challenging the conventional developmental pattern; it advocates for targeted degrowth concerning particular situations rather than a blanket and unbounded reduction of all production techniques and activities. Contrary to misconceptions, economic degrowth does not inherently entail declining scientific and technological progress. Instead,

it encourages the adoption of new practices and the creation of novel production and consumption avenues. This shift responds to a societal context where citizens increasingly prioritize healthier eating habits and demand greater transparency in the production chain of consumables.

Moreover, degrowth possesses the potential to augment employment opportunities by modernizing and broadening new production techniques, significantly benefitting small-scale producers and farmers. The food industry, armed with abundant technical, scientific, and marketing expertise, acknowledges the incompatibility of the current dominant model with emerging global perspectives, particularly concerning environmental considerations. The meat industry is proactively exploring research avenues focused on developing vegan products and cultured meat within the food sector, and this involves harvesting animal cells without slaughter and cultivating them externally in environments that favor their growth (Proteína..., 2022).

Agriculture poses a significant threat to the planet and human health, making the sector increasingly susceptible to potential disruptions in its current trajectory. In Brazil, agricultural production has increased significantly, with the number of cattle exceeding the country's human population by 2016, making Brazil the world's second-largest producer after the United States. It is essential to reduce this industry not only for human health but also because of the significant environmental pollution inherent in its production processes. The need to clear vast expanses of land for grazing and grain cultivation, which is used for animal feed, contributes to extensive deforestation, water usage, and soil desertification. Additionally, animal waste significantly contributes to greenhouse gas emissions, creating a significant environmental challenge.

Considering the environmental impact and market imbalances caused by livestock farming, eucalyptus monoculture, and commodity production, it becomes crucial to dismantle this model and transition toward a strategy of economic decline. This transition should be rooted in the fundamental responsibility of safeguarding the environment, a prerequisite for achieving the SDGs, particularly those focused on environmental protection and health. Hence, it is essential to seek solutions for restructuring production and labor after implementing degrowth. The country needs to revamp its production model to address the reconfiguration of the agri-food production system and align it with environmental protection while also meeting the population's genuine needs. This realignment can be achieved by empowering small-scale farmers, promoting family farming, and establishing worker cooperatives.

A successful example of promoting sustainable food production is the Landless Workers Movement (*Movimento dos Trabalhadores Sem Terra*), which produces organic rice in settlements like Eldorado do Sul (Rio Grande do Sul State, southern Brazil). It has emerged as Latin America's largest organic rice producer. This serves as a model due to two critical factors: collaboration among small farmers, the implementation of sustainable agricultural practices and agroecology, and the generation of technical knowledge (Martins, 2019).

Furthermore, promoting traditional and Indigenous peoples' production in line with Brazil's international commitments is important. This commitment aligns with what was established in Rio-92, particularly Principles 22 and 23 (United Nations, 1993, p. 7), which affirm:

Principle 22: Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

Principle 23: The environment and natural resources of people under oppression, domination and occupation shall be protected.

5 Degrowth as an inherent duty in upholding the fundamental right to environmental protection

Instrumentalizing fundamental rights and human rights requires the acknowledgment of explicit or implicit duties. Theoretical scrutiny must identify these duties and their subjects, whether they pertain to the State or individuals (Paust, 1992). Within this framework, it is evident that governmental actions alone cannot protect fundamental rights. Duties form an integral complementary aspect to state actions, crucial for effectively safeguarding fundamental rights. It is important to note that this complementary relationship must consistently adhere to the principles of proportionality (Colnago; Pedra, 2015). To understand the obligation to preserve an ecologically balanced environment and embrace degrowth, it is necessary to start with the concept of fundamental duty. This concept was developed by the State, Constitutional Democracy, and Fundamental Rights Research Group of the Graduate Program in Law of Faculdade de Direito de Vitória (Fabríz; Gonçalves, 2013, p. 92; our translation).

The notion of fundamental duty represents a legal-constitutional concept rooted in solidarity, compelling those under a democratic order to conduct themselves

proportionally, conduct aimed at advancing fundamental rights, whether subject to sanctions or not.

Within this construct, Fundamental duties are closely tied to exercising constitutional rights, especially in championing fundamental rights. It is important to note that although the Constitution explicitly outlines fundamental duties, it is not an exhaustive list. Implicit duties, derived through interpretive efforts, are also included.⁵ Furthermore, international treaties serve as sources of fundamental duties—specifically, human duties (Pedra, 2020).

In this context, the fundamental duty to safeguard the environment logically requires prohibiting practices that undermine environmental protection, such as the aforementioned activities. The commitments made by the country at the international level, particularly before the UN, further strengthen these duties. Another aspect that requires clarification is the foundation of solidarity. According to Duque and Pedra (2013, p. 152; our translation):

Solidarity is complementary to rights and duties, affirming the influence of fundamental rights prescribed by the constitutional norm. It can be understood through a reciprocal relationship: where rights exist, a corresponding duty to foster solidarity arises.

Therefore, when exploring fundamental duties, solidarity is an agreement that binds individuals to fulfill certain obligations towards society as a whole. This commitment aims to foster and maintain social cohesion, as emphasized by Hirsch (2020, p. 85; our translation):

It is crucial to delineate the disparity between fundamental rights and fundamental duties. Fundamental rights, as previously highlighted, serve as norms safeguarding individuals' entitlements, compensating for their protection in cases of abuse by the State or other individuals. On the contrary, fundamental duties are imperatives dictating conduct, obligating individuals to act, refrain from acting, or tolerate actions to foster optimal social cohesion.

Today, the imperative for social cohesion extends beyond domestic boundaries, permeating the international sphere. Addressing the purpose of social cohesion within fundamental duties, Siqueira (2010, p. 223; our translation) elucidates:

⁵ According to Sarlet (2009 *apud* Siqueira, 2010, p. 220; our translation): “Despite an analysis of the current constitutional text in attempting to compile a list of duties based on an analysis of the current constitutional text, the challenge immediately surfaces due to the existence of implicit duties. While there is consensus regarding their existence, disagreement persists regarding their specifics”.

It is, therefore, a legal construct that mandates every individual, society, and State to adhere to the established legal framework. It requires the formation and sustenance of a material foundation meeting the basic needs of public institutions and vital assets of primary significance to foster the proper exercise of fundamental rights.

Establishing these foundations emphasizes that guaranteeing fundamental rights depends on individuals and the State fulfilling their duties. As society evolves and knowledge accrues, there is a need to reevaluate how individuals interact. Pedra (2013, p. 291; our translation) explains that “jurists, such as scientists, must be prepared to examine the existing system and expand or modify it based on enhanced considerations”. Achieving the right to an ecologically balanced environment and securing the “right to the future” for future generations requires aligning economic practices with environmental concerns, particularly through the SDGs. Therefore, it is crucial to highlight the responsibilities of these stakeholders and put an end to predatory practices. This will challenge the limited perspective that economic analysis often provides when preventing environmental damage and disasters.

The concept of constitutional mutation underscores the ongoing need for continuous assessment of both facts and laws. What used to be a local activity with minimal environmental impact can now operate on a global scale, driven by international demands that often overlook important limits for environmental preservation. Reviewing these practices requires comprehensive scientific knowledge from various disciplines rather than relying solely on financial analyses by investors.

Recognized by the international community, the urgency of the environmental situation does not allow for delays. Pedra (2021, p. 178; our translation) emphasizes that “constitutional mutation strikes a balance between dynamism and stability, representing both substantial transformation and formal continuity”. Additionally, Pedra (2021, p. 179; our translation) states:

The necessity for interpreting constitutional texts arises from three primary factors: Firstly, the inherent indeterminacy of the text, whether intentional or unintentional, allows for multiple interpretations, rendering it multifaceted. The second factor arises inherently from the nature of interpreting meaning. A substantial number of individuals ratify a constitution, each interpreting it differently, and no single intention of a constituent can be deemed more significant than another. The third aspect pertains to the progression of political and social ideologies.

Previously, certain practices were deemed sufficient to protect the right to an ecologically balanced environment. However, in today’s landscape of high demand

and economic production, there is a need to reevaluate economic thought and action. Continuing within the established framework and staying focused on the main theme of this study, it can be affirmed that achieving the fundamental right to a balanced environment in the present era relies on restraining the market. This involves reconfiguring and reducing certain economic practices, particularly those mentioned earlier.

There is an obligation to decrease these activities, even though they have become illegal, as they are still socially accepted for economic reasons. This reduction can be achieved through two primary approaches: a) limiting excessive production intended for export and transformation into commodities and b) redirecting these activities towards cooperative social collectives, specifically worker-cooperative societies. In these societies, the commercial nature is tempered by unique characteristics inherent to these entities.

6 The shortcomings of civil compensation in environmental issues: a call for reassessment – restitution for unjust enrichment (disorgement)

Under current Brazilian law, strict liability is established for environmental harm based on the theory of integral risk for activities that threaten health and the environment. According to Wedy (2018; our translation):

As a material causal approach suffices, the party responsible bears accountability even in unintended harm without the need for foreseeability or malicious intent. Entrepreneurs assume the repercussions of their venturesome activities, a conclusion notably derived from principles such as prevention, precaution, the polluter pays, sustainable development, and intergenerational equity. However, liability does not apply if the damage is non-existent or lacks a causal connection with the activity. Merely having an activity that may pose a risk to health and the environment establishes liability, regardless of its legality. Possession of valid environmental licenses or engagement in lawful activities does not exempt individuals causing environmental degradation from the obligation to remedy it. Compliance or legality is ascertained by assessing the risk.

Despite advancements in addressing environmental civil (and criminal) liability, Brazilian legal experts often adhere to classical concepts of civil liability, requiring the identification of damage, action, or omission and a causal link to warrant restorative protection. Generally, apart from material or moral damages, the courts have not considered the deprivation of gained profits when identifying environmental consequences caused by harmful activities that have become illegal. However, unjust enrichment is particularly relevant when productive activities

degrade the environment, causing harm to those who hold this diffuse right. Firstly, discussing how unjust enrichment is treated in Brazilian law is crucial.

A hectare of land affected by fire, treated with agricultural inputs or used for a eucalyptus plantation, results from human decisions, which have immediate and intergenerational consequences that are widely recognized. In this context, the polluter infringes on the legal rights of third parties, and the transboundary nature of the damages further complicates this. When someone profits from intervening in others' legal sphere, the concept of disgorgement comes into play.

The call for degrowth arises where profits are privatized, but losses are socialized. Treating this matter solely as an illegal act, leading to the limited consequences of civil liability, which only compensates for material or moral damages, proves inadequate both legally and practically in preventing further depletion of natural resources and environmental degradation. Legally, our confrontations do not always involve a clearly defined illegal act, as some behaviors and outcomes are not traditionally categorized as illegal within the legal framework. The issue at hand falls into this category for the following reasons. From a factual standpoint, uncontrolled growth has resulted in irreversible and irreparable consequences, making it nearly impossible to compensate fully for the damage. Failing to fulfill the obligation to curb this growth would reduce civil liability to just another perceived "cost". Furthermore, the identification of damages is often insufficient and uncertain. As a result, rather than deterring certain behaviors, it might inadvertently encourage them due to their perceived profitability.

Considering these considerations, the proposal is to approach this matter from the perspective of restitution for unjust enrichment, which aligns with the provisions outlined in Arts. 884 and 886 of the Brazilian Civil Code state that unjust enrichment creates an obligation to repay what was obtained improperly; this broad principle applies to numerous scenarios and can be enforced through the *rem verso* action.

Rosenvald (2021) adopts the German classification and distinguishes between two types of unjust enrichment: one resulting from the actions of the enriched person and the other dependent on the actions of the impoverished person. The former is inherently unfair, while the latter includes enrichment due to the benefit of the impoverished person, imposed enrichment, and enrichment resulting from a third party's benefit. Brazilian legal doctrine, guided by Article 884 of the Brazilian Civil Code, addresses enrichment "at the expense of others" and delineates two categories. Nevertheless, for the context of this work, it is crucial to examine cases involving unauthorized intervention in the use or enjoyment of

others' rights, leading to enrichment for the intervening party.

In many cases, the conventional approach to compensating for damage and the blurred boundaries between legality and illegality often result in repressive legal responses that prove ineffective in protecting the environment and promoting economically sustainable activities within environmental limits. Consequently, the concept of restitution protection, grounded in unjust enrichment and already in practice in foreign legal systems, becomes imperative in addressing this subject. Hence, Rosenvald (2021, p. 335; our translation) explains that:

Restitution protection targets an illegal benefit: if the activity yielded profits, restitution involves expropriating profits linked to illegal conduct (disgorgement). Even the mere savings in expenses by the offender triggers reimbursement of the 'price of consent'—the amount reasonably due for obtaining authorization to access someone else's rights.

This approach is necessary to uphold the duty of degrowth by establishing responsibility without requiring an extensive assessment of harm. It does not deny that the conduct caused the damage; rather, it bypasses the need to quantify it and instead focuses on the illegally obtained profits. Adopting this approach offers two key advantages: first, delays in assessing damage and alternative procedural measures will not hinder the effective restitution of unjust enrichment, as often happens in the traditional verification of civil liability. Second, even if not precisely quantified, the harmful conduct will not be rewarded solely with civil compensation, which often inadequately "rewards" the illegal behavior.

Moreover, Rosenvald (2021) argues that damage is not an essential element of civil liability but rather serves its compensatory purpose. In terms of impact, harm represents just one aspect of the consequences resulting from an illegal action (Art. 186 of the Brazilian Civil Code), allowing for the pursuit of restitution to restore the *status quo* in light of the illegal act. Nonetheless, an illegal action encompasses a range of potential consequences, including nullity, forfeiture, injunction, and punishment. Therefore, Rosenvald (2021, p. 335; our translation) concludes:

Within this extensive array of repercussions resulting from an illegal act, even in the realm beyond contracts, the potential arises for penalizing anti-legal behaviors through the disgorgement of unjust enrichment or the restitution of unjust advantages, such as those accrued by the wrongdoer through cost savings derived from the unauthorized use of others' property. In these scenarios, emphasis is placed on its restitutive function instead of solely addressing the compensatory role of civil liability.

Substantive law also requires safeguards to prevent the accumulation of benefits that result from illegal acts. In addition to addressing the likelihood of illegal acts and removing those acts, protection against unjust enrichment is asserted. This applies to both realized profits and cost reductions. The proposition put forward here is that actions that go against the principle of diminishing returns and being illegal are infractions that cannot be resolved solely through penalties and compensation for losses incurred. The objective behind restitution protection is to expropriate any profits derived from such activities for the betterment of the community, considering the immeasurable and intergenerational losses. The goal is to eliminate the potential for profit from breaching a fundamental duty.

To illustrate the concept of restitution of illegally acquired profits, we can turn to a leading case in the Brazilian Superior Court of Justice (STJ). Special Appeal No. 1,698,701-RJ involves a compounding pharmacy that used the image of renowned Brazilian actress Giovanna Antonelli to market a product without a contract or authorization. The pharmacy aimed to boost sales by suggesting that a ‘detox’ compound would lead to weight loss. At the trial level, the company was ordered to pay BRL30,000 in moral damages, as well as 5% of the product sales revenue, which corresponded to the profits obtained through this infringement. On appeal, the contention focused on the lower court’s decision to calculate the percentage of sales without considering the enrichment resulting from the wrongful act. This was seen as limiting the scope of Art. 884 of the Brazilian Civil Code.

The rapporteur of the case, recognizing the novelty of addressing illegal profits, emphasized the challenge of incorporating it into established civil law doctrines. Therefore, resorting to the doctrine of unjust enrichment was necessary to address the issue. According to the rapporteur, both the principle of full compensation and the stipulations of Art. 944 of the Brazilian Civil Code, which dictates that compensation should be proportionate to the harm suffered, were deemed inadequate for this case. Like many other scenarios, the financial benefit outweighed the loss the rightful owner suffered.

In the ongoing leading case, it was also established that the transfer of assets and the distinction between impoverishment and enrichment are not prerequisites in cases of unjust enrichment through interference. The rapporteur stated that the presence of asset transfer is not necessary to establish unjust enrichment through interference. Demonstrating the intervener’s enrichment is enough without necessarily indicating the impoverishment of the violated right holder (STJ, 2018, p. 1). This corroborates Statement 35 of the Federal Justice Council, which asserts the sentence “getting rich at someone else’s expense” in Art. 886 of the Brazilian

Civil Code does not require the existence of impoverishment (Conselho de Justiça Federal, 2012, p. 20; Brasil, 2002).

Thus, a scenario is established where unjust enrichment equates to illegally obtained profits. The rapporteur also faced the challenge of quantifying the profits to be considered. It was concluded that the “reasonable price of use” does not signify gain-based damages, meaning it does not reflect what the rightful owner might have earned under a regular contract. This issue is similar to one previously addressed by Minister Vitor Nunes Leal in the Supreme Court (Extraordinary Appeal no. 56.904/SP, 1966), where he stated that the outcome of a prohibited act cannot be equated to that of a permissible act. According to the rapporteur, adhering to unjust enrichment rules is crucial to restoring the illegally acquired earnings to their rightful owner, as mandated by Art. 884 of the Brazilian Civil Code. In this specific case, the legislator intended to restore the “financial profit”, which is the increase in product sales.

Furthermore, this rationale is equally applicable to environmental harm, as restitution protection enhances the deterrent impact of civil liability by internalizing adverse externalities. It imposes penalties for exploitations not sanctioned or permitted by rightful holders. The ability to nullify profits acquired through engaging in illegal conduct discourages actions detrimental to the environment. This approach draws upon the theory of unjust enrichment, allowing for the deprivation of profits lacking a lawful cause protected by the law.

Final considerations

The primary obligation of maintaining an ecologically balanced environment carries a secondary duty—the duty of degrowth. This duty is particularly relevant in activities that exhibit two fundamental aspects: 1) they are not essential for human survival, and 2) they result in irreversible environmental damage and depletion of natural resources. Corporate livestock farming and monoculture of eucalyptus exemplify these dual characteristics, posing serious threats to the environment and human well-being. Their negative effects include greenhouse gas emissions, deforestation, depletion of freshwater, and soil desertification, directly contradicting the Sustainable Development Goals outlined in the 2030 Agenda.

Continuing production at current levels without adjusting to the limitations set by environmental regulatory authorities constitutes an illegal act. Profits derived from such actions amount to unjust enrichment, which necessitates allocation to those directly impacted (when identifiable) and to society, as it suffers from

the violation of its collective right to an ecologically balanced environment. As a result, the principle of restitution protection (*rem verso* action) arises due to the failure of business entities to comply with the obligation of reduction at the expense of others. Furthermore, it becomes the responsibility of the State to regulate polluting productive activities, specifically in livestock farming and eucalyptus monoculture. This could involve redirecting some of these activities towards family-owned livestock farming and producer cooperatives through organized public initiatives and incentive programs while meeting consumer demand.

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